

Resolving Issues with Occupational Licensing Boards

Janet Thoren

Legal Counsel

North Carolina Real Estate Commission

**My opinions are
my own and I am
also authorized to
speak on behalf of
the North Carolina
Real Estate
Commission.**

PED Report

Recommended an Occupational Licensing Commission

- Study made no finding that OLBs were not effective.
- Does not solve the supervision issue
 - Creates another level of independent board led by appointed members

Resolving the Active Supervision Issue

- Dental Board case relates only to unlicensed activity
- Board sent out cease and desist letters to large group of teeth whiteners – activity not considered on a case by case basis

FTC Guidelines

- Reasonable restraints on competition do not violate antitrust laws, even where economic interests of a competitor have been injured.

FTC Guidelines

- Ministerial acts of board engaged in good faith implementation of anticompetitive statutory regime do not give rise to antitrust liability.
- In general, initiation and prosecution of a lawsuit by a board does not give rise to antitrust liability.

Key Words From the Supreme Court

In doing so the Board relied upon cease-and-desist letters threatening criminal liability, rather than any of the powers at its disposal ***that would invoke oversight by a politically accountable official.***

135 S.Ct. 1101, p. 1115.

Draft Legislation

§ 93B-18. Unlicensed activity.

Requires all boards to use language
Dental Board now required to use in any
cease and desist letter in the Final Order
with FTC.

§150B-4 – Prohibits boards from issuing
independent cease and desist “orders.”

Summary of Proposal

1. An independently funded Occupational Licensing Commission made up of appointed members cannot provide supervision under FTC Guidelines.
2. Recommend standing legislative committee that can review annual reports, evaluate boards for continued existence or consolidation, assist in defining scope of practice.

Summary of Proposal

Support draft legislation:

3. Increases per diem cap to assist in appointments of qualified public members
4. Adds training requirement on antitrust law
5. Gives options for venue for injunction cases to reduce costs for all parties
6. Requires FTC approved language in any cease and desist notices and prohibits boards from issuing orders independent of court action.